SHALL THE INTERSTATE COMMERCE COMMISSION AND THE STATE PUBLIC UTILITY COMMISSIONS FIX WAGES ON THE RAILROADS AND ON LOCAL PUBLIC UTILITIES?

By Delos F. Wilcox,
Franchise Expert, New York City.

It would be hard to over-estimate the theoretical importance of the suggestion that the wages to be paid by railroads and public service corporations shall be fixed by public authority. A number of fundamental questions of political and social economy are involved. Back of the proposition lies the assumption that a railroad or a public utility is essentially a monopoly and therefore has been taken out of the category of undertakings whose operations in so far as they affect the public can be regulated by free competition. The proposition assumes as an established fact the existence of public regulation of the rates and service of railroads and public utilities and also assumes that such regulation is theoretically appropriate. But the proposition goes much further. It assumes the theoretical correctness of Ricardo's "iron law of wages" and the practical necessity of collective bargaining in competitive industries in order to enable the workmen to escape from the unlimited competition of labor postulated by Ricardo, and thereby to secure for themselves a standard of living high enough to make them fit for citizenship in a democracy. The proposition makes still another assumption, namely, that the public interest in the continuity, safety and efficiency of railroad and public utility service is paramount to the interests both of the owners and of the employes. In fact, it is the preëxistence of these assumptions that creates the problem for the solution of which the public regulation of wages is proposed. Therefore, in the discussion of this proposition we must first examine the several assumptions upon which it is based to see whether or not they should stand as they are, be subjected to certain modifications or be rejected entirely.

First, as to the assumption of monopoly. President Wilson has been severely criticized for saying that the eight-hour day has

received the general sanction of society. Perhaps the statement that the monopoly character of railroads and public utilities has been generally recognized by society would be subjected to the same kind of criticism; for if we examine carefully the constitutional, statutory and franchise provisions under which railroads and public utilities are operating in the various parts of the United States, we shall probably still find a great preponderance of provisions intended to preserve competition and prevent monopoly over the provisions which may fairly be said to contain a recognition of monopoly as the natural and appropriate status of these enterprises. Indeed, the rejection of general eight-hour laws by the electors of certain western commonwealths could be paralleled by the adoption of competing public utility franchises by popular vote, and by the recorded opposition of the people and their representatives to the establishment of monopoly in railroad service. Therefore, while it may be truthfully said, I believe, that the preponderant opinion of those who, through actual operation of these enterprises, through scientific study of them or through responsibility for the intelligent protection of the public interest in connection with them, have been in a position to form a sound judgment on the issues involved, is in favor of monopoly as against competition, it cannot be said with any degree of assurance that if a popular vote were taken on the question, the majority would concur in this opinion. Nevertheless, the theory of continuous public regulation through the agency of federal, state or local commissions, is logically based upon a recognition of monopoly as an existent fact. A distinction should be made, however, between the recognition of monopoly as a fact and the recognition of its existence as a normal and appropriate condition. It is only in those relatively few instances where exclusive franchises have been granted, that the appropriateness of monopoly has been fully recognized. Even the provisions now quite common in railroad and public service laws, to the effect that new competition in the same utility shall not be instituted in any given community except with the definite sanction of the state through a certificate of public convenience and necessity, do not constitute a final recognition of the appropriateness of monopoly. The certificate of public convenience and necessity is, as it were, a second string to the state's bow in the exercise of its powers of regulation. This view was set forth with great clearness and cogency by the

California Railroad Commission in the *Great Western Power Company Case* in 1912. It is true that most of the state commissions have been less ready than the California commission to use their power to permit competition even as a potential weapon to enforce the just demands of the public, but nevertheless the right to do so is nowhere denied them.

It would be idle to attempt to deny the fact that the monopoly of railroad service in the United States is far from complete and that the elements of competition still persisting give rise to very considerable difficulties in the application of the theory of public regulation. I may cite the decision in *The Minnesota Rate Cases* (230 U. S., 352), where the court sustained statutes and commission orders with reference to certain strong and favorably situated railroads while setting them aside as to a weaker road operating within the same local jurisdiction. It is another "well recognized principle of social economy" that in the development of a public utility or railroad system to serve a given community, the cost of the service ought to be spread over the entire system and the extensions through lean territory ought within reasonable limits to be carried by the portion of the system which has actually developed earning power through density of business. Yet obviously this policy cannot be carried out where there is diverse ownership of the lean and the fat; for if rates to the lean are raised to a living basis, the increase will do them no good unless the fat are also permitted to charge the same rate, in which case they are certain to become overcorpulent. If, on the other hand, the rates to the fat are reduced to the level of a hygienic regimen, the lean, being in competition with them, will starve. In these cases the United States Supreme Court found itself confronted with a situation where monopoly in the larger sense was non-existent and where, therefore, it was deemed improper to establish a fixed schedule of rates applicable to all the different railroads serving the same general community.

I may cite as another illustration the water supply in one of the outlying districts of Greater New York. This is a case where the city of New York, through its municipal system, serves about three-quarters of the territory and more than nine-tenths of the population within its corporate limits. In the particular section referred to, however, there are two private water companies having coterminous franchise and charter obligations. One has for many years supplied

the general service at rates higher than the rates charged in surrounding districts by the city. The other a few years ago revived an old franchise, established a modern pumping station and started in to compete with its older rival, not by rendering a general service throughout its franchise area at lower rates, which it probably would not have been able to do, but merely by trying to pick off the large industrial consumers in the particular corner of the district where its plant was located by charging a rate even lower than the city rate. The older company, in order to hold at least a portion of its industrial business in that portion of its district, was compelled to make a differential rate to meet the unfair competition instituted by the new company. Several years later the question of regulating the older company's rates came before the proper authorities for determination. This company, charging generally higher rates than the city rates, served a population of about one hundred and fifty thousand people, while its little rival had only nine consumers, one of whom, however, took about one-fifth as much water as all the consumers of the larger company. The authorities were confronted with the fact that in order to reduce the rates generally throughout the district and at the same time to establish a uniform living rate for the company rendering general service, it would be necessary to make a rate higher than the rate charged by the small company with a few consumers and that if such a rate was established for the large company unless it was made to apply to the small one, regulation would be ineffectual, as it would practically compel the larger company, after having its rates reduced and adjusted to the requirements of a fair return upon its investment, to see its most profitable business taken away by its unfair rival and the equilibrium between investment and earnings sought to be established by regulation thereby destroyed while the unfair rival would be directly rewarded for its unfairness. It was evident that the only effective method of regulating rates for one company was to regulate them and make them uniform for both, but this might involve a contradiction of the theory that each public service corporation should be permitted to earn a fair return upon its investment in the public service; for a uniform rate could not be worked out for two companies, operating with very different investments and operating under very different conditions, that would, except by chance, yield each of them a fair return and no more upon its own investment. It seemed theoretic-

ally necessary, therefore, in this case, to fix rates on the basis of the investment and earnings of the company which was rendering general service and to compel the other company to charge the same rate irrespective of whether this rate would enable it to earn more than a fair return upon its own investment or compel it to get along with less. The many practical and theoretical difficulties of carrying regulation through according to this program raised the question as to whether it might not be more advisable for the city to acquire the property and business of the larger company, so that just and reasonable rates and service could be brought within the reach of the people of this community, rather than to embark upon the difficult and uncertain litigation which would probably ensue upon the issuance of a rate order along the lines contemplated.

I have cited these two illustrations to show that even for the purpose of the regulation of rates and services, a complete monopoly in railroads and utilities does not everywhere exist. When it comes to the regulation of wages, the absence of a perfect monopoly gives rise to certain grave difficulties. If wages are to be regulated by public authority, they will have to conform to some standard of uniformity. For the same class of service within the same district, the same wages will have to be paid to all employes, subject to possible variations on account of length of service. If all the railroads within a given district of the United States were actually operated as a monopoly, then it would be possible to apply a uniform wage schedule, using the older and more experienced men on the lines where traffic is most congested and responsibility of employes greatest and where their energies during the hours of employment are utilized to the highest degree. But where competitive conditions exist, it may be entirely inappropriate that the scale of wages paid on the poorer road, where employment is less intense and responsibility both for life and property less exacting, should be the same as on the road where traffic is denser and responsibility greater. Except as the government regulates rates and service in connection with the railroads and public utilities and requires continuity of operation, there certainly is no more call for regulating the wages of railroad and public utility employes than there is for regulating the wages of workmen in other branches of industry, and therefore, in so far as the railroads and the public utilities fall short of being monopolies subject to effective regulation as to rates,

service and continuity of operation, it will be difficult, if not inappropriate, to regulate the wages of their employes.

I have said that the proposition to regulate wages also assumes the theoretical soundness of Ricardo's law, namely that wages tend to be reduced through competition to the point where they will merely afford a bare subsistence for the laborer and enable him to keep the supply of labor intact through the rearing of children. It seems hardly necessary to restate the argument in favor of Ricardo's law as a broad theoretical proposition. Like the Malthusian law, it is subject to modification in various ways by facts and conditions that diverge from or controvert the facts and conditions assumed. The Ricardian law is valid enough, however, to cause a general recognition of the necessity either of public wage regulation or of collective bargaining in order to enable any particular class of workmen to improve their status in society and protect themselves in the enjoyment of a standard of living above that which would be forced upon them if they submitted entirely to the processes of free and active competition among individual workmen seeking for the jobs. Here again we might say that trade unionism has received the general sanction of society, and yet if we did say that we should be subjected to widespread and violent criticism. Nevertheless, I believe it to be a fact that the preponderant opinion of those who have carefully studied the relations of capital and labor and the relations which the masses of the people, constituting the employes of capital, bear to the institutions and functions of democracy, is to the effect that trade unions are a necessary and effective means of securing certain highly desirable and necessary ends of social economy and social justice. The dangers incident to the operation of railroads and, to a certain extent, of local utilities, together with the semi-monopoly ownership and control of these enterprises, make it especially important that the employes should be organized in order to protect themselves and to establish their status at a point where they are physically and mentally in a condition to render the safe and adequate service which the public demands. Moreover, the fact that the railroads, even where they are under diverse ownership and diverse management, are more or less closely banded together, and the fact that local public utilities, though still in considerable measure owned and operated as truly local institutions, nevertheless have nation-wide semi-official organ-

izations, make it permissible, if not necessary, that the employes of a particular railroad or of a particular local utility should be united with the employes of similar utilities in other localities through such organizations as the railroad brotherhoods and the Amalgamated Association of Street and Electric Railway Employes. If the employes are to be left to protect themselves by means of the trade union, it is no more a violation of home rule for the local street railway men to put their grievances in the hands of an outsider with the power of a national organization behind him than it is for the owners of a local transit line to import thousands of professional strike-breakers from distant cities in order to enable them to resist the demands of their local employes and compel them to return to work unsatisfied, or else lose their jobs. I think we may take it for granted that unionism will persist and ought to persist among the employes of the railroads and the public utilities unless some other effective means of protecting and promoting the interests of the employes is devised.

This brings us to the nub of the whole problem. We have monopoly or semi-monopoly on one side and trade unionism on the other. The final sanction to which the trade union has to appeal for the enforcement of its demands is the strike, and it is as a result of the peculiar way in which a strike, in connection with the railroads and public utilities, affects the interests of the general public, that our problem becomes acute. In the President's recent negotiations to prevent a strike on the railroads of the United States and in the steps taken by the mayor and the chairman of the public service commission of New York City to prevent a strike of the traction employes, the paramountcy of the interests of the general public in controversies of this kind was clearly brought out, and it is as a result of the development of situations like these that we are now engaged in a discussion of the possibility of substituting for the strike a mode of governmental action that will safeguard the interests of the public while not sacrificing those of the employes whose only ultimate weapon for self-defence and the promotion of their legitimate interests has heretofore been the strike. Of course, it may be stated generally that from the standpoint of the public at large the strike, as applied to any great industry, is an unsatisfactory procedure. Society is interested in the efficiency of all industries, for their sole charter of existence is social need. But the interest of the public in

the *continuity* of particular industrial enterprises varies according to the nature of the enterprise and according to the economic conditions existing at the particular time. In so far as the interruption of the continuity of industrial operations brings sudden and overwhelming hardship upon the employes who are thrown out of work, the government has an interest because of its ultimate responsibility for the life and welfare of all the people within its jurisdiction. Beyond this, however, the public interest in continuity is chiefly confined to those industries which are monopolistic or semi-monopolistic and by the interruption of which a constant public need is interfered with. In so far as the meat-packing business of the United States or the milk supply of a particular city or the mining of coal assumes the characteristics of monopoly, even though these industries are not generally classed as public utilities and have not been brought under the supervision of the Interstate Commerce Commission or state or local public service commissions, a strike in any one of them, causing an interruption of a necessary general service, runs counter to a predominant public interest and justifies the government, as the representative of this interest, in taking such action as may be effective to reëstablish the continuity of service. But when we come to the railroads and to full-fledged public utilities such as local transit, water supply, telephone service and lighting and power service in cities, we touch upon industrial enterprises in which, on account of the universal demand for their service, the impossibility of accumulating or storing the service to bridge over interruptions, and the peculiar conditions under which the service is rendered, it is absolutely imperative that continuity of operation be maintained.

These are semi-governmental services and their cessation breeds the perils both of universal want and of intolerable anarchy. A street railway strike in a great city, if it effects an interruption of service, creates a temporary paralysis of the processes of economic and social life in the entire community. The threatened strike on the railroads of the United States last August was regarded as an impending national calamity almost the equivalent of war in the intense suffering and the colossal losses which it would cause. Such a strike is always the signal for the unleashing of the crude elemental forces of society which readily break through the thin veneer of civilization and for the time being endanger the whole

structure. What an effective street railway or railroad strike means to the community is more or less patent to all, as a result of the many instances in which strikes of this nature have been undertaken during the past twenty-five years. What a telephone strike that would actually interrupt telephone communication within a great city for a single day would mean at this stage of urban civilization, is not so easily recognized because we have had very limited experience with telephone strikers. In other public utilities, such as gas, electricity and water supply, effective strikes are practically unknown. The smaller number of employes and the comparative ease with which competent workmen could be recruited from other industries or from men in the same industry who have been promoted to higher positions, to take the place of strikers, have prevented the strike from becoming a serious public menace and it might well be, if it is deemed necessary to adopt the policy of fixing wages by act of the Interstate Commerce Commission and the state public service commissions, that, at least in the beginning, this policy should be limited to transportation and communication services.

We may safely assert that legal measures should be adopted to prevent these strikes on transportation lines—interstate, interurban and local—and also on telephone and telegraph systems. But this does not require that the Interstate Commerce Commission and the state public service commissions should at once embark upon the policy of wholesale wage-fixing. It would seem to be much more feasible to work out some plan like that recently suggested by Mr. Henry R. Towne of the Merchants' Association of New York, under which the organization of employes would not be interfered with and collective bargaining would not be abandoned, but the final sanction of the employes' demands would not be the strike, but arbitration, with an appeal to the Interstate Commerce Commission or the state public utility commission, as the case may be. Every employe would have to enter into an individual contract with the company employing him, sanctioned by law, providing against concerted action to cause an interruption of service. But if the employes of railroads and public utilities are to give up the ultimate right to strike and must rely upon the justice and mercy of the commissions, they will have to be prepared to go into politics to see that the commissioners are not selected and owned by the

companies. As the control of the commissions by the corporations is, next to ignorance, laziness and blatancy on the part of commissioners, the greatest possible menace to the regulation movement, perhaps it would not come amiss to have another powerful organized interest taking a hand in the selection of the commissioners. The public would still have to "foot the bills," as it must do in any case, but it should not be forgotten that within reasonable limits good service is, to the public, more important than low rates, and that with the legitimate demands of the employes taken care of good service is much more likely to be provided than otherwise would be the case. If the railroads and the public service corporations should combine with the employes to control the commissions and exploit the general public, then the latter, if it cannot organize public opinion and its own voting strength effectively to resist the combination of special interests, will have to resort to public ownership and operation.